

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4909 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHWIN RASIKLAL NAKSHIWALA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR GIRISH PATEL for Petitioner

MR NIGAM SHUKLA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner was employed by respondent-Government to operate machines in the P.W.D. as against one of the three posts of Junior Clerks. The petitioner was employed on 1.9.82. The petitioner admits that he was employed on monthly basis for month to month and on 2.6.83, he was appointed for a period of six months. The petitioner filed this writ petition having an

apprehension of termination of his services.

2. The order of termination of service of petitioner has not been filed by the petitioner. The petitioner filed only two documents, first is his appointment as a Junior Clerk for 29 days. This letter is dated 29th September 1982. The next document is the order of the respondent dated 27th December 1983, under which he was appointed as a Junior Clerk for a period of six months from 2.6.83. This six months' period would have come to an end on 2.12.83. It was a fixed term appointment and it should have come to an end automatically. It is not a case where the petitioner was given regular appointment after selection.

3. From the statement which has been filed alongwith the reply, by the respondent, it comes out that the petitioner was given appointments for 29 days and last appointments were for six months. The last appointment order has been filed by the petitioner and as stated earlier, his services has to come to an end on 2.12.83.

4. This fixed term appointment on temporary post does not confer any right to hold the post and continue on the post. The writ petition in apprehension, without filing order of termination, was not maintainable as it was premature. The petition has been filed on 24th September 1984, much after expiry of period of termination of service. Though the order has not been filed, but from the reply of respondents, it comes out that the petitioner was given further appointment for six months under the order, reference of which has been made in the statement, but that appointment has also come to an end on 31st May 1984. It is a case where none of the legal or fundamental rights of the petitioner have been infringed and the termination of services of the petitioner does not suffer from any infirmity. In the fixed term appointment on temporary basic, the appointment of a candidate automatically comes to an end the the order of termination is not required. On merits the petitioner has no case. This Court has passed the following order on 25th September 1984.

"Notice returnable on 1st November 1984. There will be ad-interim relief restraining the respondents from terminating the services of the petitioner except in accordance with Sec.25-F of the Industrial Disputes Act."

5. It is also not in dispute between the parties that the petitioner, in pursuance of the order of this

Court, continues in service. The learned counsel for the petitioner has contended that there has been an amendment in the Rules regarding recruitment of temporary Junior Clerks and accordingly the temporary Junior Clerks who were working up to a particular period, were given concession and a provision has been made for regularization of service of temporary Junior Clerks. The learned counsel for the respondents also admits that such a decision has been taken by the Government, but he is unable to say whether the case of the petitioner will be covered under that decision of the Government or not. It has next been contended by the learned counsel for the respondents that it is not a case where the petitioner is continuing to work for years together, but is working after 25th September 1984, under the interim relief of this Court and as such, this continuation period under the stay order may not be taken into consideration as continuation of service.

6. None of the parties have produced on record the aforesaid Resolution of the Government and in absence of same, it is difficult for this Court to give any decision thereon. Be that as it may. In view of the fact that the petitioner is working for all these years, atleast that much equity has to be taken in his favour that before he is asked to quit, after decision of this writ petition, his job, his case may be considered by the respondents taking into consideration the Resolution of the Government, a reference of which has been made by both the counsel for the parties, though without giving any details thereof.

7. In the result, though it is held that the petitioner has no case whatsoever in his favour on merits and the termination of his services is fully justified, the respondents are directed to see that in case any Resolution has been passed by the Government for regularization of services of temporary Government servants working as Junior Clerks, the case of the petitioner may be considered and in case the petitioner is found entitled under the said Resolution, necessary order may be passed accordingly and all the incidental and ancillary reliefs following therefrom may be given to the petitioner. However, in case, the case of the petitioner is not covered under the Resolution, a reference of which has been made by parties without giving details, a reasoned order may be passed and the same may be sent to the petitioner by a registered post. This exercise should be undertaken by the respondents within a period of three months from the date of receipt of certified copy of this order and till then the interim

relief which has been granted by this Court shall continue. Rule is discharged in aforesaid terms with no order as to costs.

.....

(sunil)